

REMARKS

In the Official Action of November 18, 2003, Claims 6, 11, 53, 55 and 56 were rejected under 35 USC §112, second paragraph. Specifically, Claim 6 was rejected for the "adapted" language, Claim 11 was rejected for lack of antecedent basis for the phrase "said annular base sealing surface", Claim 53 was rejected because it contained the language "generally" and Claims 55 and 56 were rejected for depending from a canceled base claim.

The foregoing amendments to the claims attend to the objections raised under 35 USC §112, second paragraph. Claim 6 has been amended to be consistent with Claims 5 and 7, Claim 11 has been amended to be consistent with claim 1 and the language "generally" in Claim 53 has been replaced with --substantially--. Claims 55 and 56 now depend from Claim 53.

The claims were also rejected over art; however, the references cited do not suggest the claimed combinations of independent Claims 1 and 53.

Claim 1 was rejected as obvious over United States Patent No. 5,377,860 to *Littlejohn et al.* in view of United States Patent No. 5,269,430 to *Schlaupitz et al.* These references do not suggest an internal retaining shelf extending laterally at the lower extremity of a sidewall recess as is claimed in Claim 1. So much is plain when comparing Figure 7 of the present application to Figure 7 of *Littlejohn et al.* '860 and Figure 4 of *Schlaupitz et al.*:

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Figure 7 of present application

FIG. 7

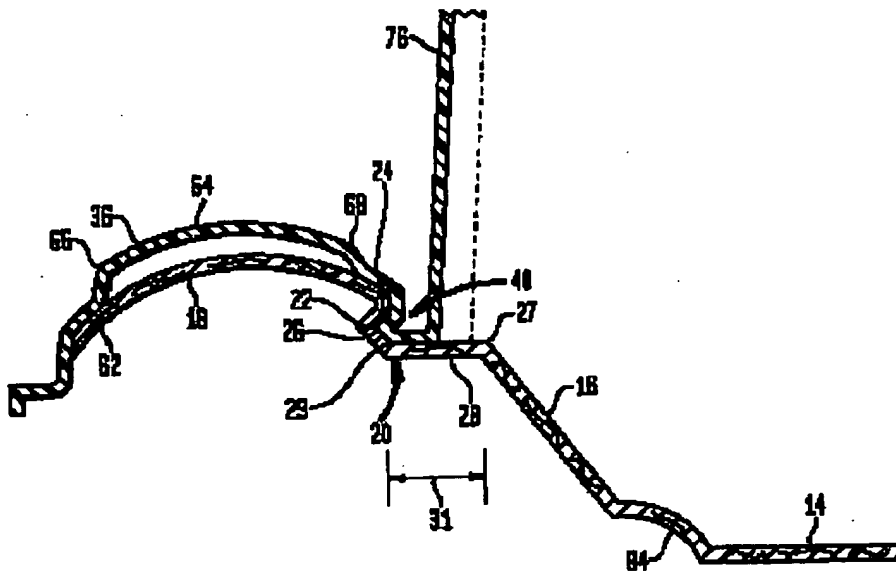


Figure 7 of Littlejohn et al.'860

FIG. 7

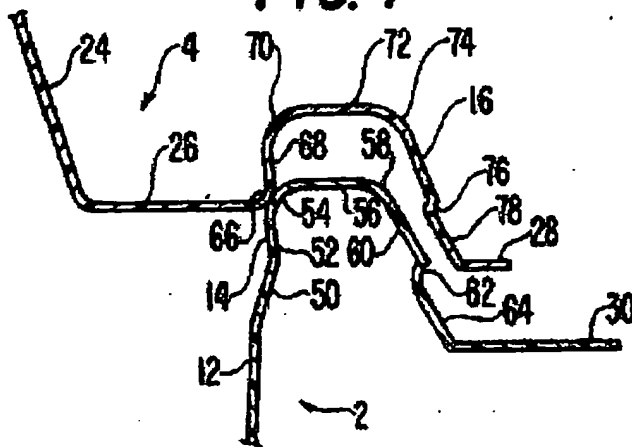


Figure 4 of Schlaupitz et al:

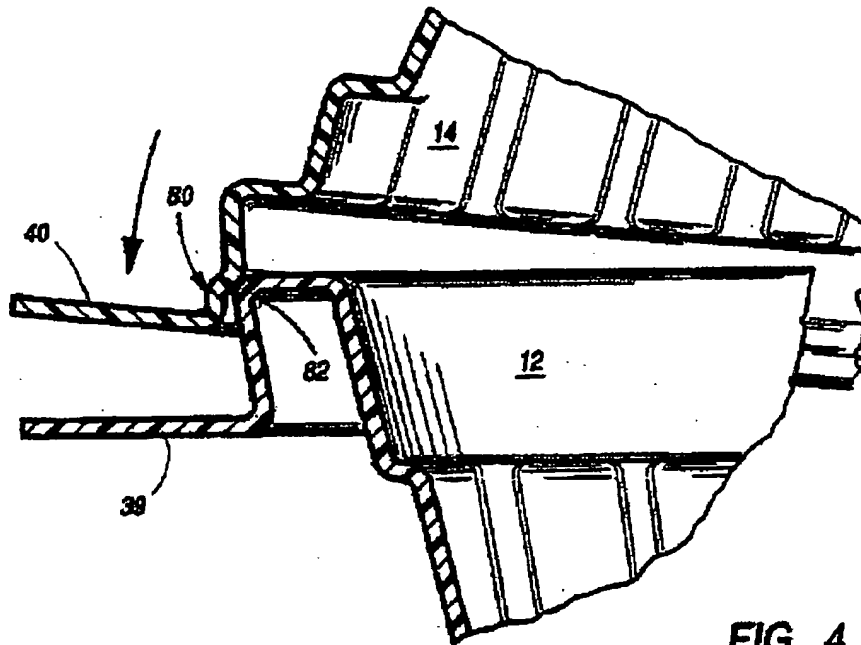



FIG. 4

The reference also fails to suggest a base sidewall recess as appears in Figure 7 of the present application and in Claim 1. At the very least, the recitation of a recess requires a separately identifiable area in the sidewall as is seen from the *Webster's* definition:

re-cess  (ri ses/Ē, rĕ /Ēses), *n.*

1. temporary withdrawal or cessation from the usual work or activity.
2. a period of such withdrawal.
3. a receding part or space, as a bay or alcove in a room.
4. an indentation in a line or extent of coast, hills, forest, etc.
5. recesses, a secluded or inner area or part: *in the recesses of the palace.* -*v.t.*
6. to place or set in a recess.
7. to set or form as or like a recess; make a recess or recesses in: *to recess a wall.*
8. to suspend or defer for a recess: *to recess the Senate.* -*v.i.*
9. to take a recess.

The substance of the Examiner's art rejection of Claim 1 is that it is obvious to place shelf 82 of *Schulaupitz et al.* '430 below shelf 52 of *Littlejohn et al.* '860 to arrive at the invention. That position is untenable for the following reason: there is no need whatsoever in *Littlejohn et al.* '860 for a shelf below sealing area at 52 because there is a shelf at 54. Indeed, the Examiner's hypothetical construction results in a superfluous structure which obstructs the interior of the container. The rejection is based on hindsight only.

Claim 53 and its dependent claims are likewise believed allowable. Claims 53 was rejected only as obvious over a proposed combination of four references, none of which suggest an inwardly convex annular base stacking recess as is recited in Claim 53 (84 in Figure 7 of the present application, reproduced above).

This application is under final rejection. The foregoing amendments are believed to put this application in condition for allowance or, in any event, in better condition for appeal.

This Amendment is being filed with a *Petition* and fee for a one-month extension of time. If additional extensions or fees are necessary, please consider this a *Petition* therefore and charge any fees to Deposit Account No. 50-0935.

Sincerely,

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